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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

WALLACE A. GOODSTEIN, Plaintiff and Appellant, v. THE DOCTORS' COMPANY et al., Defendants and Respondents.	B148188 (Super. Ct. No. SC034505)

APPEAL from a judgment of the Superior Court of Los Angeles County, David A. Horowitz, Judge. Affirmed.

Law Office of Herbert Papenfuss and Herbert Papenfuss for Plaintiff and Appellant.

Bonne, Bridges, Mueller, O'Keefe & Nichols, David J. O'Keefe and Patricia Egan Daehnke for Defendants and Respondents.

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Appellant Wallace A. Goodstein, M.D., challenges summary judgment in favor of respondents The Doctors' Company and The Doctors' Company Insurance Services, Inc. We affirm.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

This is the third time this case has come before us on matters relevant to the current appeal. We summarize the procedural history culminating in our first two decisions before describing the facts pertinent to the present appeal.

On May 16, 1995, Goodstein filed a complaint against "The Doctors' Company, Inc." and Doe defendants, containing a claim for declaratory relief and two claims for bad faith termination of an insurance policy. The complaint alleged that "The Doctors' Company, Inc.," had issued Goodstein a medical malpractice insurance policy, and that it had improperly canceled the policy as of February 1, 1994. This complaint was never served.

On June 15, 1995, Goodstein filed a first amended complaint. The only difference between the complaints was that the first amended complaint substituted The Doctors' Management Company, Inc. (TDMCI), as the sole named defendant.[1] The first amended complaint was served on TDMCI on June 26, 1995.

On July 26, 1995, TDMCI answered the first amended complaint. The answer denied all the allegations in the complaint and raised several defenses, but did not expressly allege that TDMCI was not the insurer on Goodstein's policy.

On April 4, 1997, TDMCI filed a motion for summary judgment or adjudication. In support of this motion, TDMCI submitted, inter alia, a declaration from Molly L. Farrell, who identified herself as a director of claims for TDMCI. Farrell stated that Goodstein was insured with TDMCI policy No. 0028206, and

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[1] TDMCI is not a party to this appeal.

that TDMCI had provided a defense and indemnity to Goodstein with respect to litigation against Goodstein. On May 2, 1997, Judge Richard G. Harris denied summary judgment, but granted summary adjudication with respect to Goodstein's claim for declaratory relief and one of his bad faith claims.

On or about August 14, 1997, TDMCI filed a renewed motion for summary judgment. On August 29, 1997, Judge Harris denied the renewed motion.

Goodstein dismissed the unserved Doe defendants on December 10, 1997. In July 1998, trial by jury before Judge David A. Horowitz began in Goodstein's action.

Following the opening statement by Herbert Papenfuss, who represents Goodstein, TDMCI's counsel made a motion for nonsuit, arguing that Papenfuss's opening statement referred exclusively to "The Doctors' Company" as the defendant insurer, that they did not represent this entity, and that TDMCI did not issue insurance. Papenfuss opposed the motion. Judge Horowitz granted the motion for nonsuit.

Goodstein subsequently filed a motion for a new trial and a motion under Code of Civil Procedure section 473, for relief from the dismissal of the Doe defendants or for leave to amend the complaint and proof of service to add "The Doctors' Company, Inc." as a defendant. On August 20, 1998, Judge Horowitz denied Goodstein's motions, and entered judgment in TDMCI's favor.

In an unpublished opinion we reversed, concluding that because TDMCI had secured nonsuit by means of representations contrary to declarations that it had relied upon to obtain summary adjudication, nonsuit should be reversed and Goodstein should be permitted to amend his complaint. (*Goodstein v. Doctors' Management Co., Inc.* (Sept. 15, 1999, B126160).) In addition, we directed the trial court to determine upon remand whether TDMCI should be estopped from denying that it was a party to Goodstein's insurance policy.

On February 7, 2000, Goodstein amended his complaint to name as Doe defendants "The Doctor's Company, Inc., a California corporation," and "The Doctor's Company, Inc., aka The Doctors' Company Insurance Services, Inc., a California corporation." Respondents were served with this complaint and appeared. On April 20, 2000, TDMCI stipulated that it would not raise as a defense to Goodstein's action that it is not a party to the pertinent insurance policy.

On November 17, 2000, TDMCI and respondents filed identical motions for summary judgment on Goodstein's remaining claim for bad faith cancellation of his insurance policy. Following a hearing on the motions, the trial court issued a minute order dated December 27, 2000. The minute order granted respondents' motions, but denied TDMCI's motion, reasoning that TDMCI's previous summary judgment motion had been denied, and it had not asserted grounds for renewal or reconsideration.

On January 24, 2001, Goodstein filed a petition for writ of mandate, challenging the grant of summary judgment in respondents' favor. We summarily denied the petition on February 15, 2001. (*Goodstein v. Superior Court* (Feb. 15, 2001, B147356).)

On February 8, 2001, judgment was entered in respondents' favor. This appeal followed.

DISCUSSION

Goodstein contends that (1) the trial court improperly permitted respondents to renew a motion for summary judgment that had previously been denied, and (2) the trial erred in granting summary judgment.

A. *Code of Civil Procedure Section 1008*

Goodstein contends that Code of Civil Procedure section 1008[2] precludes respondents' motions for summary judgment. We disagree.

Section 1008, subdivision (b), provides that "[a] party who originally made an application for an order" may renew a motion that has been denied upon a showing of "new or different facts, circumstances, or law . . . ." Otherwise, "[s]ection 1008 . . . forbids trial courts from reconsidering orders previously rendered in the action . . . 'unless made according to this section.' (§ 1008, subd. (e).)" (*In re Marriage of Oropallo* (1998) 68 Cal.App.4th 997, 1002.)

Here, Goodstein argues that the trial court's determination that TDMCI had improperly filed a renewed motion for summary judgment also barred respondents' motions. Citing an alleged "unity of interest" between TDMCI and respondents, as well as the conduct of TDMCI's counsel, Goodstein argues that respondents have been parties to the action since TDMCI's first motion for summary judgment, and that this motion was also respondents' motion.

In ruling on this contention, the trial court stated: "[Respondents] were not parties to the case at the time of the original Motion and they each have the right to bring the instant motion." The trial court thus concluded that respondents had not "originally made an application for" summary judgment in connection with TDMCI's first motion for summary judgment (§ 1008, subd. (b)) because they were not parties to the action at that time.[3]

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[2] All further statutory citations are to the Code of Civil Procedure, unless otherwise indicated.

[3] Respondents suggest that it is law of the case that the trial court ruled correctly on this matter, citing our denial of Goodstein's petition for writ of mandate. In our brief order summarily denying the petition, we stated: "The newly added defendants had the right to have their own motions for summary judgment determined." However, such summary denials do not establish law of the case. (*Kowis v. Howard* (1992) 3 Cal.4th 888, 899.)

Central to a person's status as a party to an action is the court's acquisition of personal jurisdiction over the person. (See *Ikerd v. Warren T. Merrill & Sons* (1992) 9 Cal.App.4th 1833, 1842.) "Personal jurisdiction requires: (1) due process, that is, that there be notice and an opportunity to be heard; and (2) compliance with the statutory jurisdictional requirements of process. [Citation.] Put more simply, what is required is due process and service. There must be present a reasonable method of notice and a reasonable opportunity to be heard; actual knowledge of the proceeding alone is not enough. [Citation.]" (*Ibid*.)

Personal jurisdiction "may be conferred by consent of the person, manifested in various ways . . . ." (2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, § 178, p. 742, italics omitted.) Pertinent here is consent through a general appearance, which can be made on behalf of the person in a civil action by an attorney. (*Id*. at § 192, pp. 759-760.) However, "[i]f the only basis of jurisdiction of the person in the particular case is appearance, a purported appearance by an unauthorized attorney cannot confer such jurisdiction . . . ." (*Id*. at § 193, pp. 760-761, italics omitted.)

Furthermore, in special circumstances, personal jurisdiction may exist over a person nominally distinct from the parties to an action when the person is fundamentally the same as one of the parties. Thus, "[s]ection 187 of the Code of Civil Procedure supports an amendment adding a judgment debtor liable for the original defendant's obligations on an alter ego theory. The rationale is that the new defendant is really one and the same as the original defendant and, as such, was represented by the original defendant's participation in the trial leading to the judgment." (*Oyakawa v. Gillett* (1992) 8 Cal.App.4th 628, 631, fn. omitted.)

Here, Goodstein contended in his opposition to respondents' motions for summary judgment that section 1008 barred these motions because they were materially identical to TDMCI's first motion for summary judgment. However,

none of the evidence or facts cited in Goodstein's separate statement of facts referred to this contention. In reply, respondents contended that Goodstein had waived any contention that respondents were not new parties to the litigation. They argued that since respondents had been named as Doe defendants, Goodstein had participated, without objection, in written discovery, depositions, and law and motion by respondents, all of which had been conducted earlier by TDMCI.

The record before us lacks a reporter's transcript of the pertinent hearing, and it does not otherwise clarify whether Goodstein tendered his contention that respondents were parties to TDMCI's prior summary judgment motions to the trial court as a matter requiring a finding, or as raising triable factual issues in connection with respondents' motions for summary judgment. However, in either case, he has failed to demonstrate error.

To the extent that Goodstein contends the trial court erroneously found respondents were not parties to the action when TDMCI filed its first motion for summary judgment, such findings are reviewed for the existence of substantial evidence (see *Ikerd v. Warren T. Merrill & Sons*, *supra*, 9 Cal.App.4th at p. 1841). Absent the reporter's transcript from the pertinent hearing, we presume that the evidence supports the trial court's findings, when, as here, no error appears on the face of the record. (Cal. Rules of Court, rule 52; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521-522; *Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.)

The record before us on the question at issue is scanty and ambiguous. Nothing before us unequivocally indicates that when TDMCI filed its original motion, respondents had become parties to the action by service of process, a general appearance, an authorized act of counsel, or any other means. Nor is there evidence compelling the conclusion that there is an alter ego relationship between respondents and TDMCI, or that they are otherwise "one and the same."

(*Oyakawa v. Gillett*, *supra*, 8 Cal.App.4th at p. 631.)[4] Accordingly, Goodstein has failed to provide a record that overcomes the presumption that the trial court's ruling was correct.

To the extent that Goodstein contends there are triable issues as to whether respondents were parties to the action at the pertinent time, the trial court properly concluded that no such issues existed. As the court explained in *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30-32, a party opposing summary judgment must identify pertinent issues and evidence in its separate statement of facts, and not solely in its opposition memorandum or other documents. Here, Goodstein developed his contention that respondents were parties to TDMCI's first motion for summary judgment *solely* in his memorandum of points and authorities, and his separate statement is silent on this matter.

As the court noted in *North Coast*: "'[I]t is no answer to say the facts set out in the supporting evidence or memoranda of points and authorities are sufficient. "Such an argument does not aid the trial court at all since it then has to cull through often discursive argument to determine what is admitted, what is contested, and where the evidence on each side of the issue is located."' [Citations.]" (*North Coast Business Park v. Nielsen Construction Co.*, *supra*, 17 Cal.App.4th at p. 30, quoting *United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 335.)

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4 We note that Goodstein's contention was not resolved in our unpublished opinion in *Goodstein v. Doctors' Management Co., Inc., supra,* B126160. In that opinion, we observed only that there was "some overlap and relationship between" TDMCI and Goodstein's insurer -- whom we referred to as "The Doctors' Company, Inc." -- and that they shared the same address. Furthermore, we accepted the trial court's determination that TDMCI never represented itself to be "The Doctors' Company, Inc.," but noted that TDMCI and its counsel had cultivated the impression that TDMCI had issued the policy and that "The Doctors' Company, Inc." and TDMCI "were the same entity, or substantially identical." However, the issues of party relationship and attorney authorization central to this appeal were not presented to us, and we did not address them.

In sum, section 1008 did not preclude respondents' motions for summary judgment.

B. *Summary Judgment*

1. *Standard of Review*

Summary judgment is subject to de novo review. (*Edward Fineman Co. v. Superior Court* (1998) 66 Cal.App.4th 1110, 1116.) Generally, "'[r]eview of a summary judgment motion by an appellate court involves application of the same three-step process required of the trial court. [Citation.]'" (*Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1662.) The three steps are (1) identifying the issues framed by the complaint, (2) determining whether the moving party has made an adequate showing that negates the opponent's claim, and (3) determining whether the opposing party has raised a triable issue of fact. (*Ibid.*)

2. *Bad Faith Cancellation or Nonrenewal*

The key issues on summary judgment concern Goodstein's claim that respondents cancelled or failed to renew his malpractice policy in bad faith. Goodstein's first amended complaint alleges that on February 1, 1994, respondents improperly cancelled Goodstein's malpractice coverage on the basis that they knew to be incorrect, namely, that Goodstein was using experimental surgical techniques that were dangerous and unsupported by research.

Different standards govern claims of bad faith nonrenewal and bad faith cancellation. Absent a statute or policy provision, "an insurer has no legal duty to renew an insurance policy when its term has expired. Ordinarily, therefore, an insured cannot base a cause of action for bad faith on nonrenewal, even if there is a coverage dispute between the insurer and insured over a prior claim." (*Travelers Ins. Co. v. Lesher* (1986) 187 Cal.App.3d 169, 194, disapproved on another point

in *Buss v. Superior Court* (1997) 16 Cal.4th 35, 52, fn. 14; see *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 338; Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2001) ¶ 5:86, p. 5-17.)

By contrast, "[l]iability carriers do not have an unfettered right to cancel coverage . . . . Cancellation provisions in an insurance contract are subject to the implied covenant of good faith and fair dealing just like any other clause. [Citation.] This is a covenant '". . . that neither party will do anything which will injure the right of the other to receive the benefits of the agreement."' [Citation.] The phrase 'good faith' in the context of performance or enforcement of a contract '"emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party . . . ."' [Citations.] The precise duty embraced by the covenant depends on the nature of the bargain struck between the insurer and the insured and the legitimate expectations of the parties arising from the contract. [Citation.]" (*Helfand v. National Union Fire Ins. Co.* (1992) 10 Cal.App.4th 869, 903-904.)

a. *Respondents' Showing*

On summary judgment, respondents contended that they had properly cancelled Goodstein's policy for nonpayment of premiums. Their separate statement of undisputed facts cited evidence supporting the following version of the underlying events: Respondent The Doctor's Company (TDC) issued a medical malpractice policy to Goodstein in 1981. In 1982, respondents sent an endorsement to Goodstein that specifically excluded coverage for suction assisted lipectomy (SAL) -- popularly known as "liposuction" -- effective February 1, 1983. In November 1984, Goodstein returned an updated application that indicated he had not added any new procedures and he was not performing SAL. In December 1992, respondents learned that Goodstein was performing a modified form of SAL

called "subdermal liposculpture" (SDL) when Goodstein reported claims involving this procedure.

The effective dates for Goodstein's final policy were from May 1, 1993, through May 1, 1994, and his annual premium was $23,125, payable on a quarterly basis. Goodstein's policy provided that respondents could cancel his policy during the policy period on enumerated grounds, including "[d]iscovery of fraud or material misrepresentation by . . . [¶] . . . [a]ny insured . . . in obtaining the insurance." Upon cancellation, respondents were to send a notice that stated "the grounds for cancellation."

Goodstein's policy also contained the following provisions: "The Exchange may nonrenew your policy at the expiration of your *policy period*. If the Exchange nonrenews your policy, it will send you a written notice by certified mail 60 days prior to the end of your *policy period* . . . . [¶] . . . [¶] . . . If you do not pay your premium as required . . . , the Exchange will consider your nonpayment as your notice to us of your cancellation of this policy. The Exchange will send you a ten-day advance notice of such cancellation."

Regarding premium payments the policy stated: "The premium for each *billing period* is due . . . twenty (20) days before the expiration of the current *billing period*. Any premium not paid on or before its due date will be in default. If premium is in default, and the current *billing period* expires, coverage under your policy ends."

On October 5, 1993, respondents sent Goodstein a letter informing him that he would no longer be indemnified for claims involving SAL. The letter further stated: "This procedure has been excluded from your policy since February 1, 1983 and it came to our attention earlier this year that you are performing [SAL]. Since we have not addressed this issue until now you will have coverage for incidents involving [SAL] **prior** to October 5, 1993."

Shortly thereafter, Goodstein's office inquired about obtaining coverage for SAL. Under respondents' guidelines, SAL coverage was provided only for procedures involving a blunt-tipped or bullet-shaped instrument lacking sharp edges. After respondents responded to the request for information on October 11, 1993, Goodstein's office manager indicated that Goodstein had met the coverage criteria for SAL coverage for many years. The letter also indicated that a video demonstrating Goodstein's technique of SDL had been submitted to respondents "for review by Dr. Mark Gorney . . . ."

On October 22, 1993, Goodstein submitted an updated policy application. In response to a question asking whether he had added a procedure not identified on his original application, Goodstein answered "Yes" and stated: "Non-vacuum Blunt Tip Liposculpture. Video submitted to Dr. Gorney."

At some point, Goodstein made a presentation on SDL to the American Society of Aesthetic Plastic Surgeons (ASAPS), and the ASAPS issued a position statement on SDL. On October 27, 1993, respondents sent Goodstein a letter that stated: "This letter is to inform you that as of December 27, 1993 at 12:01 a.m. . . . [SDL] . . . will be excluded from your policy. It is the Exchanges opinion that this procedure poses a significant risk to patient safety. Our opinion coincides with the 'Position Statement' made by [ASAPS] . . . regarding a presentation made to them on [SDL]. [¶] Please be advised that if you wish to apply for coverage for [SAL] we need a letter to that effect signed by you, Dr. Goodstein. A letter signed by your secretary can not [*sic*] be accepted. Also, in order to qualify for SAL privileges you must comply to our guidelines which were sent to you on October 11, 1993."

A TDC memo dated November 3, 1993, indicates that respondents had received "yet another claim on the SDL procedure," and that they had decided "to set [Goodstein's] file up for nonrenewal versus a midterm cancellation."

On December 21, 1993, respondents sent Goodstein a quarterly premium statement for the period from February 1, 1994, to May 1, 1994. The premium owed was $4,307, and was due 20 days before February 1, 1994. Goodstein never responded to this statement or paid the requisite premium.

On February 2, 1994, the insurance commissioner issued an emergency directive barring cancellation of policies for nonpayment in the areas of Los Angeles affected by the Northridge Earthquake from January 17, 1994, to March 18, 1994. On February 4, 1994, respondents phoned Goodstein's office and inquired about his overdue premium payment. Goodstein stated that he would take care of the payment on February 7, 1994. When Goodstein did not make the payment, respondents left a follow-up telephone message on February 10, 1994.

On February 22, 1994, respondents' underwriting committee approved a recommendation to "nonrenew" Goodstein's policy. On the same date, a notice was sent to Goodstein indicating that his policy would not be renewed as of May 1, 1994. The notice stated: "Reasons for nonrenewal: frequency, severity, and material change in practice--specifically, the procedure subdermal liposculpture (SDL)." The notice also informed Goodstein that he could purchase "Extended Reporting Coverage (tail coverage)." Goodstein did not respond to the notice or invoke his right under the policy to appeal the nonrenewal.

On March 24, 1994, respondents sent Goodstein a notice indicating that his policy had been cancelled effective at 12:01 a.m. on February 1, 1994, because of his failure to make the requisite premium payment. The notice again offered Goodstein the opportunity to purchase extended coverage. The notice also informed Goodstein that if he wished to have his policy considered for reinstatement, he should remit full payment of the premium. Goodstein did not respond to the notice.

b. *Goodstein's Opposition*

Goodstein's separate statement conceded much of this showing, but it attempted to raise triable issues on several points, relying primarily on Goodstein's own declaration. The declaration stated that in 1981, when Goodstein first applied for malpractice insurance from respondents, he was not doing liposuction. He admitted that he had prepared the 1983 update application indicating that he did not perform liposuction. However, he stated that respondents never asked him again about liposuction until 1993, and that they first informed him by letter that he lacked coverage for SDL on October 5, 1993.

Goodstein's declaration further stated that in response to the letters of October 5 and 11, 1993, he completed and signed an application requesting liposuction coverage. When respondents informed him by letter on October 27, 1993, that he lacked SDL coverage, and that he had failed to sign the application for SAL coverage, he told respondents by phone that "SAL and SDL are basically variations on the theme and are both liposuction" and that "[t]here was nothing dangerous about either procedure." He also demanded that his liposuction coverage be reinstated, but he was never told that it was. Respondents knew that liposuction consisted most, if not all, of his practice, and that there was little reason for Goodstein to have the policy if it did not cover this procedure.

Goodstein's declaration further stated that the ASAPS's position statement that respondents relied upon in ending his SDL coverage was "part of an ongoing effort to destroy [his] practice" resting on false allegations of patient injury, and that respondents never investigated the truth of those allegations. According to Goodstein, respondents asked a doctor to make an independent examination of SDL, and he concluded that "there was nothing dangerous about it, and that it was simply a form [of] liposuction." However, respondents did not act on this report. Goodstein contended that as of February 22, 1994, the date of respondents'

decision to nonrenew Goodstein's policy, there had been no claims against his policy for liposuction-related treatment.

Finally, Goodstein's declaration stated that he suffered financial problems arising from the Northridge Earthquake, and he informed respondents of these problems. However, respondents never told him about the insurance commissioner's directive regarding cancellation of policies for nonpayment. The only notice that Goodstein received was the notice mailed March 24, 1994, stating that his policy was cancelled effective February 1, 1994.

c. *Absence of Material Triable Issues*

The trial court concluded that there were no material triable issues regarding whether respondents had properly canceled Goodstein's policy for nonpayment of premiums. In our view, the trial court ruled correctly.

Goodstein did not dispute that respondents sent him the quarterly premium statement on December 21, 1993; respondents twice informed him by phone in early February 1994 that his premium was due; he then knew that the premium was due; on March 24, 1994, respondents sent a notice informing him that his policy was canceled effective February 1, 1994, and that he could seek reinstatement by payment of the premium; and he never responded to any of these notices by paying his premium.

Furthermore, Goodstein did not contend that in issuing the March 24, 1994, notice, respondents failed to follow the policy provisions concerning cancellation for nonpayment.[5] Rather, he contended only that (1) respondents acted in bad faith in failing to inform him about the insurance commissioner's directive, and

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[5] In this regard, Goodstein does not argue or suggest that the respondents' telephone notices concerning nonpayment of the premium in February 1994 did not constitute the 10-day advance notice of cancellation required by the policy in cases of cancellation for nonpayment. He has therefore waived any such contention.

(2) respondents acted in bad faith regarding the nonrenewal of his policy due to his use of SDL.

Regarding item (1), neither Goodstein nor respondents have submitted the text of the insurance commissioner's directive or asked us to interpret it: they agree that its effect was to postpone cancellation of insurance policies for nonpayment of premiums until March 18, 1994. However, as the trial court observed, it is undisputed that Goodstein never paid his premium, and respondents cancelled his policy on March 24, 1994.

Nonetheless, Goodstein argued in conclusory terms that respondents' failure to tell him about the directive breached the covenant of good faith and fair dealing implied in his insurance policy. However, as our Supreme Court explained in *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 36, this covenant operates solely to protect the insured's receipt of the benefits provided by the express terms of the policy, and thus it "'should not be endowed with an existence independent of its contractual underpinnings.' [Citation.]" (Quoting *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1153.) Here, Goodstein does not identify any way in which respondents' conduct frustrated his receipt of policy benefits. The directive effectively extended the period granted Goodstein under the policy to pay his premium, and Goodstein was accorded this extension but never paid his premium.

Regarding item (2), the undisputed facts indicate that respondents properly cancelled Goodstein's policy for nonpayment of premiums, and nothing in the record suggests that Goodstein has a tenable alternative bad faith claim arising from his use of SDL. Here, respondents submitted evidence that they had elected to nonrenew, rather than cancel, Goodstein's policy due to his use of SDL, and that they had complied with the policy provisions concerning nonrenewal by sending out a nonrenewal notice on February 22, 1994, more than 60 days before the end of the policy.

In an apparent attempt to raise a triable issue about respondents' compliance with the nonrenewal provisions, Goodstein denied that they sent him the nonrenewal notice on February 22, 1994. Goodstein stated in his declaration that "[t]he only notice [he] received was that his policy had been canceled," pointing to the cancellation notice that respondents sent on March 24, 1994, arising from his nonpayment of premiums.

On this matter, the trial court concluded that Goodstein's declaration failed to raise a factual dispute about the February 22, 1994, nonrenewal notice because Goodstein admitted that he had received this notice in a prior declaration submitted in opposition to TDMCI's first motion for summary judgment. In our view, the trial court correctly determined that Goodstein could not create a triable issue by flatly denying his prior declaration statements made under penalty of perjury. (*Preach v. Monter Rainbow* (1993) 12 Cal.App.4th 1441, 1451.)

There appear to be factual conflicts about whether respondents properly determined that SDL did not meet coverage guidelines for SAL, and on closely related matters. However, these conflicts are not material disputes of fact regarding a claim for bad faith nonrenewal. Even if they were resolved in Goodstein's favor, a claim for bad faith nonrenewal would fail because respondents were not under any legal duty to renew the policy. (*Travelers Ins. Co. v. Lesher*, *supra*, 187 Cal.App.3d at p. 194; *Mock v. Michigan Millers Mutual Ins. Co.*, *supra*, 4 Cal.App.4th at p. 338.)

Summary judgment was therefore proper.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED

CURRY, J.

We concur:

VOGEL (C.S.), P.J.

HASTINGS, J.